

NATURAL RESOURCES COMMISSION

Meeting Minutes

August 13, 2008

Pursuant to the notice filed with the Town Clerk, the meeting of the Natural Resources Commission was held at 141 Keyes Road, Concord, MA at 6:00 p.m. on Wednesday, August 13, 2008. The following Commissioners were present: Alexander Easterday, Chair, Jamie Bemis, and George Lewis. Steve Verrill arrived at 6:07 p.m. Delia Kaye, Natural Resources Director and Cynthia L. Gray, Natural Resources Administrative Assistant were also present.

COMMISSION COMMENTS

The Commission discussed and determined that it would not be appropriate for a Commission member to vote on issuing a permit if that Commissioner did not review the draft document for which a vote was being taken.

CONTINUANCES:

BALULESCU – 10 Wood Street / NOI – Replacing an existing deck and constructing an addition to a single family dwelling and constructing a driveway in the 200-foot Riverfront Area of the Sudbury River and the 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-970**

Applicant, Lano Balulescu appeared with David Crossman of B & C Associates. Jamie Bemis moved to close the hearing. George Lewis seconded. All so voted. George Lewis moved to approve Findings A through E. Jamie Bemis seconded. All so voted. Jamie Bemis moved to issue a standard Order of Conditions with Special Conditions 18 through 46. George Lewis seconded. All so voted. Steve Verrill abstained.

WARE / NOI – 201 Independence Road and 525 Rear Lexington Road – Constructing two residential dwellings with associated driveway and utilities, in the 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-974 This hearing was continued to September 3, 2008.**

PALEOLOGOS / ANRAD – 800 Main Street – Confirmation of wetland resource area boundaries on the property, **DEP File #137-971. This application was withdrawn.**

DEPARTMENT OF CONSERVATION AND RECREATION / NOI – Walden Pond – Rehabilitating the east bank of Walden Pond, site improvements, pruning and plantings in the 100-foot Buffer Zone to Bank of Walden Pond, **DEP File #137-972**

Victor Walker of Walker-Kluesing Design Group appeared with Bill Maher of Nitsch Engineering. The impervious area is being reduced by 5,875 square feet by removing two sets of existing concrete steps from Walden Street to the pond, and constructing one that will be more centrally located. Portions of walkways will also be redesigned, further reducing impervious surfaces. Additional dry wells are proposed and will each handle 500 gallons of water. The Commission suggested frequent patrolling of the restoration

area to minimize erosion. Mr. Walker stated that the chosen contractor would be responsible for securing the area and he further noted that it would be more beneficial to accommodate the public instead of controlling the public.

This hearing was continued to September 3, 2008 at which time the Commission expects to close and issue an Order of Conditions pending review by Engineering of the plans presented at this evening's hearing.

BRUCE / NOI – 369 Lindsay Pond Road – Constructing an attached garage and in-law suite addition, installing a new septic tank, and reconstructing a portion of the driveway, and landscaping in the 100-foot Buffer Zone to Bordering Vegetated Wetland, DEP File #137-978

Drew Garvin of R. Wilson Associates appeared on behalf of the applicants. Mr. Garvin noted that the driveway entrance had been reconfigured and nothing was proposed in the 50-foot No Build Zone. One oak tree will be removed. Jamie Bemis moved to close the hearing. George Lewis seconded. All so voted. George Lewis moved to issue a standard Order of Conditions with Special Conditions 19-44. Jamie Bemis seconded. All so voted.

TOCIO / NOI – 506 Old Bedford Road – Constructing nine (9) single-family residential units, a sewage disposal system and stormwater treatment facility, a portion of which is within the 100-foot Buffer Zone to Bordering Vegetated Wetland, DEP File #137-977

Brian Butler of Oxbow Associates attended on behalf of the applicant with Attorney Julie McNeill of Deschenes & Farrell, P.C. Conceptual plans were submitted reducing the number of units from 9 to 7. Two units are located in the buffer zone. Trees have been located on the plan. Three to four feet of fill is proposed to raise the road. One unit will be a slab on grade but it has not yet been determined which unit this will be, and the remainder is proposed with full basements. The Commission noted that slab construction is preferred in order to minimize neighborhood flooding.

This hearing was continued to September 3, 2008.

GRACE PROPERTIES, LLC (Malouf) / NOI – 63B Cambridge Turnpike - Constructing additions and associated wooden decks to the front of the buildings within the 200-foot Riverfront Area of Mill Brook and 100-foot Buffer Zone of Bordering Vegetated Wetland, DEP File #137-979

Jamie Bemis moved to close the hearing. Steve Verrill seconded. All so voted. Jamie Bemis moved to approve Findings A-C. Steve Verrill seconded. All so voted. Jamie Bemis moved to issue a standard Order of Conditions with Special Conditions 19-41. Steve Verrill seconded. All so voted.

NASHOBA BROOKS SCHOOL / NOI – 200, 280 Strawberry Hill Road and 3B Macone Farm Lane –Removing one single-family dwelling, constructing four tennis courts and one multi-purpose field, expanding the existing parking lot, constructing additional sidewalks, and stormwater improvements, a portion of this work is within the

200-foot Riverfront area of an unnamed stream and the 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-980. This hearing was continued to September 3, 2008.**

HILL / NOI - 107 Westford Road – Tree removal, new stone wall construction , existing stone wall reconstruction, and reconstructing a driveway within the 100-foot Buffer Zone to Bordering Vegetated Wetland, DEP File #137-981. This hearing was continued to September 3, 2008.

NATIONAL GUARD ARMORY / NOI – 91 Everett Street – Regrading, installing a subsurface drainage system, clearing debris, and redirecting flow in Bank, Bordering Land Subject to Flooding and within the 100-foot Buffer Zone to Bank to alleviate basement flooding, DEP File #137-982

Stephen Chapman, P.E., Vice President of Fay, Spofford & Thorndike, LLC appeared with Steven Wagner, Commonwealth of Massachusetts Executive Office of Public Safety and Security, Military Division. As requested, the applicant analyzed floodplain fill and compensation through a cut and fill analysis. Natural Resources and Engineering staff agreed that the proposed cut and fill analysis met the regulatory burden of work in Bordering Land Subject to Flooding.

Mr. Moberly Chan, owner of 100 Laurel Street, recommended changes including installing a wall and plantings along the slope. Jeanne Kangas of 959 Hill Road, owner of 108 Laurel Street, submitted her acceptance to the proposed work. Snow storage will be identified on the plan to show that no snow will be placed in the drainage channel. The project has been advertised and an Addendum to the RFP will be submitted.

This hearing was continued to September 3, 2008 at which time the Commission expects to close and issue an Order of Conditions.

FOLK / NOI – 181 Lowell Road – After-the-fact tree removal and wetland restoration in Bordering Vegetated Wetland, Bordering Land Subject to Flooding and within the 100-foot Buffer Zone to Bordering Vegetated Wetland, DEP File #137-983

David Crossman of B & C Associates appeared on behalf of the applicant. No proposal has been received yet for the state-listed Britton's violet to conduct the study required by the Natural Heritage and Endangered Species Program. Ms. Folk has authorized the survey to be done. Alexander Easterday recommended that an Enforcement Order be prepared and voted on at the September 3, 2008 Commission meeting for a failure of timely action by the applicant, as this matter has been ongoing for more than a year. Mr. Easterday stated his intent to meet with the Town Manager and possibly the Board of Selectmen.

This hearing was continued to September 3, 2008.

NEW APPLICATIONS:

U.S. FISH AND WILDLIFE SERVICE, GREAT MEADOWS NWR / NOI – 19X

Peter Spring Road -Cleaning drainage ditches and creating four deeper water pools in the Great Meadows impoundments in Bordering Vegetated Wetlands, Land Under Waterbodies and Waterways, Bordering Land Subject to Flooding, the 200-foot Riverfront Area of the Concord River, and the 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-***. This hearing was continued to October 15, 2008.**

MBTA / NOI – MBTA bridge over Main Street (Rt. 62) – Replacing the existing MBTA bridge carrying the Fitchburg Line over Main Street, associated approach work, and increasing the vertical clearance over the roadway in the Riverfront Area of the Sudbury River, and the 100-foot Buffer Zone to Bordering Vegetated Wetland, DEP File #137-985. This hearing was continued to September 3, 2008.

YOUSEFI / NOI – 241 Barretts Mill Road - Remove trees and replace with native trees and invasive species control within the 200-foot Riverfront Area of Spencer Brook and 100-foot Buffer Zone to Bordering Vegetated Wetland, DEP File #137-986

Applicants Manny and Laura Yousefi attended the hearing. Latin names of the trees were provided at this evening's hearing. The Trees will be replaced by hand. Cut and dab will be used for invasive species control. The Commission stated that no foliar spray would be allowed.

This hearing was continued to September 3, 2008 at which time the Commission expects to close the hearing and issue an Order of Conditions.

MIDON / RDA 08-10 – 33 Spencer Brook Road – Installation of a pipeline trench to support utility cables and loam and seed disturbed areas all within the 200-foot Riverfront Area of Spencer Brook.

Applicant Bill Midon appeared with the utility contractor, Richard Couture, Jr. of United Utility Corporation. A trencher will be used to limit the removed material. The applicant or contractor will give 3 days notification to the abutter before work commences. A Special Condition will include back-filling the trench each day. George Lewis moved to issue a Positive Determination 2B and Negative Determination 2 & 3 with Special Conditions. Steve Verrill seconded. All so voted.

GUINThER / NOI – 94 Elm Street – After-the-fact filing for tree removal in the 200-foot Riverfront Area, Bordering Land Subject to Flooding, and 100-foot Buffer Zone to Bank and Bordering Vegetated Wetlands. Also installing an irrigation system, restoring an existing retaining wall, constructing a stone wall, tree removal, invasive species removal, brush removal and replacing with landscaped lawn in Bordering Land Subject to Flooding, 200-foot Riverfront Area of the Sudbury River, and the 100-foot Buffer Zone to Bank and Bordering Vegetated Wetland, DEP File #137-987

Troy Guinther of Old Village Landscape appeared with Ben Ewing of Stamski & McNary and the applicant, Jane Deering. This is an after-the-fact filing. The applicant will be replacing and expanding the retaining wall. The Commission requested a detail of the wall. The Commission requested that the planting areas and invasive species removal areas be shown, as well as details provided on species for removal and replantings. The Commission also requested the layout of the sprinkler heads for the irrigation system, and more information on the pump system, which is proposed from the Sudbury River.

The grass patio should be clearly identified on the plan. The Commission requested that the Applicant determine the appropriate screening between the two lots with abutting property owner. The Commission requested that the existing and proposed tree line be shown. A Special Condition will be that the applicant will establish a wet meadow area in the 25-foot No Disturb Zone to be mowed one, two or possibly three times/year. This will be noted on a revised plan together with the chosen seed mix. Jamie Bemis noted that landscaping contractors should make it a point to learn the Wetlands Protection Act.

This hearing was continued to September 3, 2008.

DIVISION OF NATURAL RESOURCES / NOI – 100-foot section of trail off 116 Shore Drive – The project involves installing water bars along an eroded section of the trail in the 100-foot Buffer Zone to the Bank of White Pond, **DEP File #137-***. This hearing was continued to September 3, 2008.**

OTHER BUSINESS:

Marabello – 874 Barretts Mill Road Enforcement Order

Frank DiLuna, Esq. of Murtha Cullina appeared before the Commission on behalf of John Marabello, Sr. Mr. DiLuna noted that Mary Trudeau of Lexington had been retained as a wetlands consultant but was unable to attend this evening's hearing due to prior commitments. Delia Kaye, Natural Resources Director, issued a violation letter on July 16, 2008 requiring that Mr. Marabello and a wetland consultant appear at this meeting, and to cease and desist all activities in the 100-foot buffer zone to wetlands. The Commission requested that Mr. DiLuna coordinate a site visit with all parties to occur before the next Commission meeting. Judith Pickett, Esq. of Brackett and Lucas has been retained by Vincent Mula, owner of Boston Bark.

Executive Office of Transportation (EOT) – Restoration Plan

Richard Doherty appeared before the Commission to present a restoration plan for the unauthorized rail removal in the 200-foot Riverfront Area of Nashoba Brook. This will be accomplished before November 1, 2008. The EOT will notify the Natural Resources Commission 5 days prior to implementation of the work.

Van der Wansem Restoration Plan – 597 Lowell Road – Mowing Plan

Paul and Wilhelmina Van der Wansem appeared before the Commission to present a mowing plan to continue to mow areas within jurisdictional resource areas and buffer zones. The Commission stated that an aerial was not adequate, and that a proper survey plan must be provided to indicate the limits of mowing, all wetland resource areas and their buffer zones, existing trees including species and size, tree line, and planting beds.

This will establish where the grandfathered mowing/maintenance areas are. The Commission approved the removal of a dying maple tree, provided the tree will be taken down when the ground is frozen. The Commission approved the immediate removal of a dead willow tree which is 97 feet from wetlands.

The Van der Wansems will provide the Commission with an update at the September 17, 2008 Commission meeting.

Warner's Pond Dam Breach

On August 9, 2008, the heavy rains overtopped the temporary coffer dam in place during the dam reconstruction. The Porta-Dam overtopped and formed an approximately 10-foot wide weir, and dropped the pond elevation 3 to 4 feet. The coffer dam was replaced to the extent that the water elevation was restored by the morning of August 11. The release of water probably caused or contributed to the failure of a section of retaining wall approximately 200 feet downstream at Nashoba Brooks Bakery. On the morning of August 11, Porta-Dam agreed to install a secondary dam to flood the work area to equalize the pressure between the pond and the work area. Later that morning, Natural Resources staff noticed turbid water from a second breach that was undercutting the Porta-Dam in a second area. This second breach caused massive sedimentation past the confluence of the Assabet River, beyond the Route 2 crossing, but not as far as the South Bridge and which cleared within 24 hours. The Porta-Dam divers stopped installing the second dam because the large amount of sediment being lost indicates structural instability of the coffer dam.

Plans were revised that afternoon to do a controlled breach of the coffer dam, again dropping the pond elevation to reduce the head on the coffer dam. Once the water levels equalize, the divers will complete installing the secondary dam. The Contractor estimates that approximately 10 days of construction time was lost. Engineering will provide a plan to be incorporated as an amendment to the existing Order of Conditions.

58 Old Powdermill Road– Essco/L3 Communications - Slope Failure

A massive slope failure was identified by Concord Light and Municipal Plant employees when they were notified of a tree on the powerlines at 58 Old Powdermill Road. This is of serious concern to the Town because the Town's main power supply is at the top of this slope, approximately 10 feet from the top of the slope failure. In addition, the Tennessee Valley Easement has a 36-inch high pressure gas main next to the 115 Kv Concord line.

The site is under a purchase and sale with Alexan Concord to develop a 350-unit housing development. As soon as the slope failure was identified, the Town Manager and Town officials, including the Natural Resources Director, identified an appropriate course of action to immediately stabilize the slope and protect critical infrastructure. A geotechnical engineer, Robert Grillo of CMA Engineers, was called in to assess the situation. Based on his recommendation, approximately 400 cubic yards of trap rock was placed at the top of slope by Doug Macone to stabilize the slope from failing further. This work appears to be outside NRC jurisdiction.

Approximately 3,000 cubic yards of sand has slumped to the bottom of the slope, some of it in wetlands. All of the impacted wetlands appear to be in Acton. Delia met onsite with the Acton Conservation Director, Tom Tidman, Bill Renault, Acting Town Engineer, and representatives from FTN Limited (current owners) Alexan Concord (future owners) and Larry Beals of Beals Associates to discuss a solution. The Town views the trap rock as a temporary solution, and considers the site to be unstable. Beals Associates will prepare a plan to remedy this slope failure and evaluate the remaining section of slope for its integrity. Delia and Tom will coordinate with DEP (both Northeast and Central regions) for guidance on how to permit the activities.

It is unclear what caused the slope to fail. Trailers in place for years were moved in advance of the site being sold; these trailers probably blocked flow from that section of the slope. Unusually high summer rains likely also contributed to the slope failure.

CLOSE HEARING/ISSUE PERMITS:

CONCORD WOLD LLC - 110 Commerford Road, DEP File # 137-984

Jamie Bemis moved to close the hearing. George Lewis seconded. All so voted. Jamie Bemis moved to accept Findings A-C. George Lewis seconded. All so voted. Steve Verrill moved to issue a standard Order of Conditions with Special Conditions 19-40. All so voted.

CERTIFICATES OF COMPLIANCE:

HUNT (Partial) – 315 Harrington Avenue, DEP File #137-831

Jamie Bemis moved to issue a Partial Certificate of Compliance. George Lewis seconded. All so voted.

NEW CASTLE HOLDINGS, LLC (Partial) – 48 Elm Street, DEP File #137-915

Steve Verrill moved to issue a Partial Certificate of Compliance. Jamie Bemis seconded. All so voted.

OTHER BUSINESS (Cont.):

Draft Wetland Bylaw

George Lewis has drafted the initial Wetland Bylaw for review and comments by the Commission. The Commission will establish a work session for late August or early September in order to go through the draft and establish priorities. The Commission will also work with the Planning Board relative to the Wetland Conservancy District.

NRC representative to the HDC update – There is no interest with the two candidates that submitted green cards. The Commission will continue its search for two interested candidates.

CPC Project Update – Hubbard Brook Farmfield and CR Baseline Monitoring

The Concord Land Trust purchased the Hubbard Brook Farmfield at 69 Sudbury Road in early May for \$3.25 million. Pursuant to Town Meeting approval, the Town authorized payment of \$750,000 of Community Preservation Act funds towards the purchase. In return, the Land Trust will grant a Conservation Restriction on the land to the Town.

For the Conservation Restriction Baseline Monitoring Documentation project, Natural Resources staff published a Request for proposals and the selection committee determined that the Massachusetts Audubon Society was the most qualified to perform the work. The project will begin in late September, and ten Town-held Conservation Restrictions will be prioritized by the Conservation Restriction Stewardship Committee and Natural Resources staff. Two CRs that will be included in this pilot project are the Hubbard Brook Farmfield and the open space parcel acquired by the Town as part of the affordable housing project at 335 Walden Street. Delia Kaye will forward a written update to the CDC.

Warner's Pond Stewardship Committee – New Member Appointments

The Warner's Pond Stewardship Committee, a NRC committee, forwarded a list of names requesting appointment to the WPSC. This would bring the number of members to 19, which is unwieldy for a committee. The Commission will ask the members of this NRC committee to develop a charge and narrow down the number of members. Alexander Easterday noted that he will invite Joanne Loynd and Charlie Simpson to an upcoming Commission meeting to discuss this further.

Assabet River Cleanup – Saturday, September 13, 2008

Provided for informational purposes only.

Approve May 13, 2008 meeting minutes

Steve Verrill moved to accept the meeting minutes as presented. George Lewis seconded. All so voted.

Approve May 21, 2008 meeting minutes

Steve Verrill moved to accept the meeting minutes as presented. George Lewis seconded. All so voted.

Approve June 24, 2008 meeting minutes

George Lewis moved to accept the meeting minutes as presented. Jamie Bemis seconded. All so voted.

This meeting adjourned at 10:05 p.m.

Respectfully submitted,

Delia R. J. Kaye, Natural Resources Director

Cynthia L. Gray, Natural Resources Administrative Assistant